

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

WASHINGTON TROTTING ASSOCIATION &
MOUNTAIN LAUREL RACING ASSOCIATION
d/b/a PA MEADOWS RACETRACK & CASINO¹

Employer

Case 6-RC-12713

and

INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA
(SPFPA)

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Washington Trotting Association & Mountain Laurel Racing Association d/b/a PA Meadows Racetrack & Casino, operates a racetrack and casino in Washington, Pennsylvania, where it employs approximately 1500 employees, 150 of whom are security officers acting as guards.² The operation is commonly referred to as "The Meadows." The Petitioner, International Union, Security, Police and Fire Professionals of America (SPFPA), filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking, as amended at the hearing, to represent a unit comprised of all full-time and regular part-time security officers who perform guard duties on the "casino side" of the Employer's operation.³ A hearing officer of the Board held a hearing in this matter, at which time

¹ The name of the Employer appears as amended at the hearing.

² The record reflects that the parties in this matter use the job titles "security officers," "security guards," and "guards" interchangeably and I shall, as well.

³ Prior to amending its Petition on the day of the hearing, the Petitioner sought to represent "all full time and regular part time security officers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended, employed by Cannery Casino Hotel at The Meadows Racetrack & Casino, 210 Racetrack Road, Washington, PA 15301."

Sports Arena Employees Union, Local No. 137, of the Laborers International Union of North America (“the Intervenor”) filed a motion to intervene in these proceedings, on the grounds that it represented all of the Employer’s guards for several decades. The hearing officer granted the Intervenor’s motion and permitted the Intervenor to participate fully in the hearing. The Petitioner and the Employer filed timely briefs with me, which I have duly considered.⁴

As evidenced at the hearing and in the briefs, the parties disagree on the following issues: whether the Board has jurisdiction over the Employer; whether, assuming that the Board has jurisdiction, there exists a contract that bars the processing of the petition; whether the Intervenor is disqualified from representing the Employer’s security officers based on Section 9(b)(3) of the Act; and whether a unit limited to a subgroup of the Employer’s guards, the casino security officers, constitutes an appropriate unit.⁵

Both the Employer and the Petitioner contend that the Board has jurisdiction over this Employer, while the Intervenor asserts that it does not.⁶ Additionally, the Intervenor maintains that there exists a contract that bars the processing of the petition, while the Petitioner and the Employer disagree. Further, the Petitioner and the Employer, contrary to the Intervenor, contend that the Intervenor should be disqualified from representing the petitioned-for guards, pursuant to Section 9(b)(3) of the Act, because the Intervenor also admits to membership non-guard employees.⁷ Finally, the Petitioner asserts that the security officers who perform guard duties in connection with the racetrack portion of the Employer’s business lack a community of interest with the casino security officers whom the Petitioner seeks to represents. Contrary to

⁴ The Intervenor did not file a brief.

⁵ It is undisputed that the subject security officers are properly classified as “guards” within the meaning of Section 9(b)(3) of the Act. Nevertheless, based on record evidence that the Employer’s security officers are employed “to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premises,” I find that they are “guards” as defined by the Act.

⁶ The Intervenor additionally argues that the Board’s long-established prohibition against asserting jurisdiction over racetrack enterprises should be overturned, however, it is not within my discretion to do so.

⁷ As fully detailed herein, it is undisputed that the Intervenor admits to membership non-guard employees.

the Petitioner, the Employer contends that the only appropriate unit herein is the one that the Petitioner initially sought to represent when filing its petition: a unit comprised of all security officers of the Employer. The Intervenor states only that it “favors” the unit that it previously represented (a unit comprised of all of the Employer’s security officers), but does not contend that an overall guard unit is the only appropriate unit. The unit sought by the Petitioner in its amended petition includes approximately 100 employees, while the unit the Employer seeks would include about approximately 150 employees. The Petitioner has indicated its willingness to proceed to an election in the broader unit, in the event that I determine that the petitioned-for unit comprised only of casino guards is not appropriate.

I have considered the evidence and the arguments presented by the parties on each of the issues. As discussed below, I have concluded that the Board has jurisdiction in this matter. I have further determined that there is no contract that bars the processing of the petition. I have also concluded that the Intervenor is disqualified from being included on the ballot in this proceeding. Finally, I have determined that the racetrack security officers and the casino security officers share a substantial community of interest and that the smallest appropriate unit must include all security officers whom the Employer employs at The Meadows. Accordingly, I have directed an election in the unit set forth herein.

To provide a context for my discussion of the issues, I will first give an overview of the Employer’s operations. Then, I will present in detail the facts and reasoning that support each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

A. History of Operations

The Meadows began as harness racing track for horses, in or about the early 1960’s. The Pennsylvania State Harness Racing Commission, a government entity that oversees all harness racing in Pennsylvania, granted the original harness racing licenses to Washington Trotting Association (“Washington Trotting”) and Mountain Laurel Racing Association

(“Mountain Laurel”), which were then owned by Ladbroke. Thereafter, Magna Entertainment Corporation (“MEC”), assumed ownership of Washington Trotting and Mountain Laurel, and began operating the racetrack.

In or about December 2006, Cannery Casino & Resorts (“Cannery”) acquired Washington Trotting and Mountain Laurel. Cannery entered into a “lease-back” racing services agreement with MEC, pursuant to which MEC would continue to operate the racetrack. Cannery, now the parent company of the Employer, simultaneously began development of a casino on the site. From about April 2007 until about June 2009, the Employer operated a temporary casino on the Employer’s property, with slot machine gaming operations taking place in a tented facility.⁸ In June 2009, the Employer opened its permanent casino at the same location and what was once a stand-alone racetrack now became part of the casino facility. In or about August 2009, MEC filed for bankruptcy and the Employer successfully petitioned to terminate its racing services agreement with MEC. Since about August 2009, the Employer has directly operated the racetrack, along with the permanent casino.

B. Current Operations

The Employer’s facility at The Meadows is comprised of a main building that is approximately 355,000 square feet in size; a racetrack and grandstand; a parking lot with 1400 spaces; and a 5-story parking garage with 1400 spaces.⁹ Within the main building, the bottom level houses a food court and banquet room, a lounging area and the “Racebook”, which is an 80,000 square foot area where patrons place bets and watch simulcast races on video monitors. A door from the Racebook area leads directly outside to the grandstand for the racetrack.¹⁰

⁸ The Employer employed approximately 600 employees in the temporary casino. The Pennsylvania Gaming Control Board oversees all casino operations in the Commonwealth of Pennsylvania.

⁹ The parking garage and parking lot are available for use by patrons of both the racetrack and the casino.

¹⁰ Patrons can also view races from three levels in the main building, from glass-enclosed “boxes”, which overlook the track.

There is a 24-lane bowling alley located on the ground level, which includes a bar and a private party room. Patrons use elevators, escalators and/or stairs to get to the second or main level of the casino building, where 3,500 slots machines are located. Referred to as “the gaming floor,” this public area occupies approximately 155,000 square feet of the building. There are separate outside entrances for the gaming floor and the bottom level of the building.

As noted, the racetrack area of the facility is physically connected to the main building through the Racebook doors. In addition to the track and grandstand, the racetrack area includes a paddock and stables.¹¹ There is a “stable gate” entrance from the main drive to the racetrack area, but only those people holding licenses from the Pennsylvania State Harness Racing Commission may enter through this gate.

The casino operates 24 hours per day, seven days per week, and 365 days per year. The Racebook area of the casino, where patrons place wagers, lounge and watch simulcast races, is open from 11:00 a.m. until 1:00 a.m. or 2:00 a.m. each day. In accordance with the Commonwealth’s licensure requirements, the racetrack hosts approximately 210 live race days per year.¹²

The Employer’s primary administrative departments are the Slots Department, the Food and Beverage Department, the Human Resources Department, the Environmental Services Department and the Security Department, whose employees are at issue herein. The Employer employs approximately 1200 employees in its permanent casino facility.¹³ Of this number, there are 95 full-time and 12 part-time security officers who regularly work in the casino.

¹¹ There are 25 barns on the property and over 1000 horse stalls.

¹² Days on which live racing does not occur are referred to as “dark days.”

¹³ Non-guard job classifications in the casino include slot machine technicians, slots floor employees, food and beverage employees, environmental services employees, accounting employees and administrative office employees.

The Employer currently employs approximately 300 employees on the racetrack side of the business. There are about 48 security officers who work in the racetrack area of the facility, most of whom are part-time employees. Generally, the Employer assigns five guards to the stables, six guards to the paddock, two guards to the parking garage and one to the Racebook (inside the casino).

Walter "Skip" Alrutz is the Employer's Director of Security. In this capacity, Alrutz is responsible for overseeing all security operations for The Meadows, at both the racetrack and casino, as well as in the parking lot and/or parking garage. Reporting directly to Alrutz is Art Richardson, the Employer's Director of Racing Security.¹⁴ Also reporting to Alrutz are three shift supervisors within the casino: Ron Rossi (8:00 a.m. to 4:00 p.m.)¹⁵; Robert Dunn (4:00 p.m. to midnight shift); and Dan McKinney (midnight to 8:00 a.m. shift).¹⁶ In accordance with requirements by the Pennsylvania Gaming Control Board, at least 20 non-supervisory guards are assigned to work in the casino during each of the three shifts. The Employer utilizes additional security officers in the parking garage and Racebook areas of the facility.

II. COLLECTIVE BARGAINING HISTORY

Beginning in the early 1960's, the Intervenor served as the collective-bargaining representative of the security officers whom the Employer employed at the Meadows racetrack.¹⁷ When parent company Cannery opened its temporary casino on the site in 2007, the unit was expanded to include security officers whom the Employer employs in the casino.

¹⁴ Richardson long served as the Director of Security at the racetrack, prior to the Employer's development of the casino. Once the Employer built the casino, however, Richardson became subordinate to Alrutz.

¹⁵ At the time of the hearing, Rossi was off work in accordance with the Family Medical Leave Act ("FMLA").

¹⁶ The parties stipulated that Director of Security Alrutz, Director of Racing Security Richardson and the three casino shift supervisors are "supervisors" within the meaning of Section 2(11) of the Act, inasmuch as they have authority to hire, fire, and discipline employees and/or effectively recommend these actions.

¹⁷ From the 1960's until 2007, the racetrack guards were included in a unit with other racetrack personnel. The current representational status of non-guard racetrack employees is unclear.

The Intervenor continued to represent both groups of security officers, in a single guard unit, when the permanent casino opened in June 2009. The most recent contract between the Employer and the Intervenor became effective April 1, 2007 and expired November 30, 2009.

The expired agreement, at Article 1 ("Union Recognition"), describes the unit as follows:

All guards, watchmen and security personnel (including individuals serving traffic functions) and all officers and classes of officers, including sergeants, lead officers, and assistants to shift supervisors, and all others below the levels of Shift Supervisor and of Director of Racing Security, but excluding all other employees working in the casino or racing facilities or their administrative offices, casino department employees, racing department employees, food and beverage employees, electricians, marketing department employees, executive department employees, and specifically the Security Department Director, Assistant Director, Director of Racing Security, Shift Supervisor, Investigator, and racetrack ambulance crew and also excluding the surveillance department employees as defined by state gaming law and regulation.

In or about mid-December 2009, after the Petitioner filed its petition in this matter on December 2, 2009, the Employer and the Intervenor entered into a new Memorandum of Tentative Agreement ("MOTA"), the effectiveness of which is dependent by its terms on the outcome of this proceeding. Through that MOTA, the Intervenor and the Employer agreed that the unit would be comprised of all security officers employed by the Employer at The Meadows, in a single guard unit.¹⁸

III. JURISDICTION

Citing Section 103.3 of the Board's Rules and Regulations, which prevents the Board from asserting jurisdiction in matters involving the horseracing industry, the Intervenor contends that the Board does not have jurisdiction in this case. More particularly, the Intervenor argues that The Meadows' origination as a racetrack, along with its current level of horse racing activity,

¹⁸ The Intervenor's employee bargaining committee was comprised of both casino security officers and racetrack security officers. During the administration of the expired collective-bargaining agreement, a guard from the racetrack division served as the "overall shop steward" for the racetrack and casino. Additionally, there were three assistant shop stewards, one for each shift in the casino. On behalf of the Employer, Security Director Alrutz was responsible for overseeing the processing of security officers' grievances, regardless of whether the grievances originated in the casino or at the racetrack.

precludes the Board from asserting jurisdiction over the Employer. Contrary to the Intervenor, the Employer and the Petitioner are in agreement that it is appropriate for the Board to assert jurisdiction herein.

A. Relevant Facts

As previously noted, what began as the Employer's stand-alone racetrack operation in the 1960's currently exists as a casino operation with an attached racetrack. The transformation started in 2007, when the Employer began operating its temporary casino in a tent, and was completed with the opening of the permanent casino in June 2009. In its temporary state, the casino featured 1900 slot machines; that number grew to 3500 slot machines with the opening of the permanent casino.

When it served as a stand-alone operation, the racetrack provided food and beverage services to its patrons. Once the casino opened, however, food and beverage services were removed from the racetrack and became part of the casino. Currently, all of the Employer's restaurants and bars operate out of the casino and none is dedicated to service at the racetrack alone.

Revenues from the racetrack division represent a small portion of the Employer's overall business at The Meadows. Once the Employer opened its temporary casino in 2007, the gaming operations soon dwarfed business activity from the racetrack. This trend increased with the emergence of the permanent casino and the record establishes that the casino operations now account for 96.4 percent of the Employer's revenues.

B. Analysis

As noted, the Intervenor contends that the Board has no jurisdiction in this matter because Section 103.3 of the Board's Rules and Regulations provides that the Board will not assert jurisdiction in any proceeding involving the horseracing and dog racing industries. The Board has, in fact, consistently declined to assert jurisdiction where an employer's primary enterprise is a racetrack. See, e.g., American Totalisator Co., 243 NLRB 314 (1979); Centennial

Turf Club, 192 NLRB 698 (1971); and Walter A. Kelley, 139 NLRB 744 (1962). At the same time, the Board has frequently exercised its jurisdiction over casino gambling operations. See, e.g., El Dorado Club, 151 NLRB 579 (1965). In circumstances where, as here, an employer's enterprise involves both horseracing and casino gambling, the Board examines the integration of the two operations and whether the racetrack portion of the operation is a major or minor aspect of the business. Prairie Meadows Racetrack and Casino, 324 NLRB 550 (1997).

In Prairie Meadows, *supra*, the Board considered whether to assert jurisdiction over an employer whose operation, like The Meadows, began as a horse racetrack and subsequently expanded to include a casino. In concluding that it was appropriate to exercise jurisdiction, the Board in Prairie Meadows noted that the vast bulk of the employer's income, operations and staff was connected to the casino. Even the racetrack grandstand, observed the Board, predominantly served the casino patrons. Similarly, in its decision in Delaware Racing Association d/b/a Delaware Park, 325 NLRB 156 (1997), the Board asserted jurisdiction over an employer based on its determination that the employer's racetrack was dependent upon the casino, not the other way around. Finding that the casino was not an adjunct of the racing operation, the Board held that Section 103.3 did not apply.¹⁹

Based on the facts of the instant case and Board precedent, I find that it is appropriate for the Board to assert jurisdiction in this matter. As in Prairie Meadows and Delaware Park, the determinative issue is not whether the Employer began its business as a racetrack, but how it currently operates. The record evidence establishes that the enterprise here is predominantly a casino, with the bulk of the activity taking place on the gambling floor and in the casino restaurants, lounges and bowling alley. Further, the vast majority of the Employer's employees work in the casino and most of its income is derived from the casino operations. In these

¹⁹ In Delaware Park, casino operations generated 62 percent of the employer's income, as compared to 98 percent in Prairie Meadows. The Board held that this difference did not alter the view that the casino was not an adjunct of the racing enterprise. Delaware Park, *supra*, at fn. 4.

circumstances, it can only be concluded that the casino is not an adjunct of the racing operation; to conclude otherwise would, as the Board cautioned in Prairie Meadows, “allow the tail to wag the horse.” Prairie Meadows, supra, at 551. Thus, Section 103.3 of the Board’s Rules and Regulations does not apply in this matter.

IV. CONTRACT BAR

As previously stated, the Intervenor contends that a current contract exists that bars the processing of the Petitioner’s petition herein. In support of this position, the Intervenor points to its history as the representative of the Employer’s security officers, as well as the existence of a MOTA that the Intervenor entered into with the Employer after the instant petition was filed. Both the Employer and the Petitioner dispute that there is a contract bar and assert that it is appropriate to proceed to an election in this matter.

A. Relevant Facts

The record evidence establishes that the Intervenor previously represented the racetrack guards, first in a mixed unit with all other employees of the Employer, and then, once the temporary casino opened in 2007, in a unit comprised of security officers from both the racetrack and casino sides of the operation. The contract for the guard unit expired November 30, 2009. Thereafter, the Employer and the Intervenor continued to bargain for a new contract covering the security officers in a single unit. As admitted by the Intervenor’s counsel at the hearing, however, the parties did not reach agreement on the terms of a new contract until after the Petitioner filed its petition in this matter on December 2, 2009.²⁰

B. Analysis

When a petition is filed for a representation election among a group of employees who are alleged to be covered by a collective-bargaining contract, the Board must decide whether the

²⁰ Notably, at the hearing, the Intervenor was unable to produce a copy of the subject MOTA that had been dated and executed by both parties, despite the Hearing Officer’s repeated requests for the document. The attorney for the Intervenor represented that a handwritten copy had been executed by the Intervenor’s representatives, after the petition herein was filed, and that a separate typewritten copy had been executed by the Employer’s representatives. The handwritten copy of the MOTA, which contains undated signatures by the Intervenor’s representatives, appears in the record as an exhibit. No party produced or introduced into the record the typewritten copy of the MOTA, which allegedly bears the signatures of the Employer’s representatives.

asserted contract exists in fact and whether it conforms to certain requirements. If the Board finds that the contract does exist and that the requirements are met, the contract is held a bar to an election. Hexon Furniture Co., 111 NLRB 342 (1955). To constitute a bar, a contract must be in writing and signed by all the parties before a petition is filed. Appalachian Shale Products Co., 121 NLRB 1160, 1162 (1958); See also, Waste Management of Maryland, 338 NLRB 1002 (2003) (even informal documents can serve as a contract bar provided that they lay out substantial terms and conditions of employment and are signed). The party asserting that a contract is a bar to an election bears the burden of proving the facts establishing the applicability of the contract bar doctrine. The German School of Washington, D.C., 260 NLRB 1250, 1256 and cases cited therein (1982).

Based on record evidence, I find that there is no contract bar at issue in this matter. The most recent contract expired, without extension, on November 30, 2009. As the Intervenor admitted, the MOTA it eventually reached with the Employer for a new contract did not exist until after the Petitioner filed its petition. Thus, there was no contract in existence when the petition was filed. The Intervenor failed to meet its burden to prove that there was an agreement signed by both parties prior to the filing of the instant petition and I accordingly find that there is no bar to the processing of the petition.

V. DISQUALIFICATION OF THE INTERVENOR

Having determined that the Board has jurisdiction in this matter and that there is no contract in existence that would bar the processing of the Petitioner's petition, I now turn to the issue of whether the Intervenor should be disqualified from being placed on the ballot as a potential representative of the Employer's guards. Both the Employer and the Petitioner argue that Section 9(b)(3) of the Act precludes the Intervenor from being placed on the ballot because the Intervenor also admits non-guards as members of its labor organization. The Intervenor, of course, takes a contrary position.

A. Relevant Facts

The record establishes that the Intervenor, which is affiliated with the Laborers International Union of North America (“the Laborers”), has long represented non-guard employees of the Employer, even alongside the Employer’s guards. The Intervenor, by its counsel, further acknowledged at the hearing that it regularly admits non-guard employees to its ranks through its bargaining relationships with other employers in many different industries.

B. Analysis

Section 9(b)(3) of the Act states, in relevant part, that “no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization...is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.” Thus, the Act requires the exclusion of guards from non-guard units and only permits certification in a separate unit by a bargaining representative that does not admit non-guard employees as members. Any union seeking to represent guards may not accept non-guards to membership. American Building Maintenance Co., 126 NLRB 185 (1960). A petition for employees who are determined to be “guards” will be dismissed when the union that seeks to represent them also admits to membership employees other than guards. A.D.T. Co., 112 NLRB 80 (1955). Similarly, an intervening union that represents non-guard employees will not be included on a ballot in an election directed for guards. University of Chicago, 272 NLRB 873 (1984) (Board reasoned that placing a guard/non-guard union on a ballot as an intervenor “creates the false impression that the guard/non-guard union is equally as capable of securing the protections of the Act as other candidates on the same ballot.” Id. at 876).

Given the record evidence, including the Intervenor’s acknowledgement that it regularly admits to membership non-guard employees, as well as guards, I am compelled by Section 9(b)(3) and Board precedent to conclude that the Intervenor is disqualified from being certified as the collective-bargaining representative of the petitioned-for employees. Accordingly, the Intervenor’s name shall not be placed on the ballot in the election ordered below.

VI. APPROPRIATE UNIT

As amended at the hearing, the petition seeks a single unit limited to the Employer's security officers who work on the casino side of The Meadows operation. Contrary to the Petitioner, the Employer contends that the only appropriate unit herein is one that includes all of the Employer's security officers, from both the racetrack and the casino sides of the business. There are approximately 100 employees in the Petitioner's proposed unit and about 150 employees in the broader unit. As noted above, the Petitioner has indicated its willingness to proceed to an election in a broader unit comprised of racetrack and casino security officers, if I determine that the petitioned-for unit of casino guards is inappropriate.

A. Relevant Facts

All of the Employer's security officers possess the same essential job duties: to protect customers and staff; to protect the Employer's property (equipment, earnings and horses); and to control access to the property.²¹ Additionally, the security guards act as hosts at the Employer's facility, giving information and directions to customers, and providing vehicle assistance such as jump-starts. Both racetrack and casino security officers carry out their functions by patrolling, whether on foot or by vehicle. All guards take and prepare reports, as necessary, regardless of whether they work on the casino side of the business or in the racetrack area. Casino security officers remove money from the slots machines. Racetrack security officers also log horses in and out of the racetrack enclosure and maintain a vehicle log for that area.

The casino security officers perform their job duties inside the main casino building and outside, around the perimeter of the building and in the parking areas.²² Racetrack guards

²¹ Both the Pennsylvania Gaming Control Board and the Pennsylvania State Harness Racing Commission have strict rules prohibiting underage access to gambling areas. Also, no one is permitted in the racetrack enclosure without a license from the Pennsylvania State Harness Racing Commission.

²² Casino security officers are not responsible for patrolling the stables; this task is reserved for the racetrack security officers.

perform their duties at the racetrack gate, in the racetrack enclosure (including the paddock and stable areas) and in the parking garage. Additionally, some of the racetrack security officers work inside the casino building, in the Racebook area.

In order to be employed at The Meadows, all of the Employer's employees, including its security officers, are required to maintain some kind of state licensure. Those guards who are assigned within the main building (including the racetrack security officers working in the Racebook betting area) must possess a gaming license from the Pennsylvania Gaming Control Board. Racetrack security officers must carry licenses from the Pennsylvania State Harness Racing Commission. Both types of licenses require a background check, fees and photo identifications.²³

Job applicants for security officer positions at The Meadows complete an on-line application for employment. Those who pass the initial screening and wish to work in the casino have an interview with Director of Security Alrutz. Applicants who wish to work on the racetrack side of the business are interviewed by Art Richardson, the Director of Racing Security. Richardson then submits recommendations to Alrutz about whether applicants should be hired for positions as racetrack security officers. Ultimately, Alrutz makes the final decision about whom to hire on both sides of the operation.²⁴ Hiring is contingent upon the applicant's success in securing necessary licenses from the appropriate governmental agency.

²³ Approximately half of the racetrack security officers also maintain licenses from the Pennsylvania Gaming Control Board. Also, due to a "miscommunication" from corporate headquarters, 90 percent of the guards whom the Employer initially hired when it began its casino operations were required to have a license from the Pennsylvania State Harness Racing Commission. The Employer has since ceased requiring all casino guards to obtain harness racing licenses.

²⁴ Alrutz similarly has the final authority to promote security officers on both the racetrack and the casino sides of the business. He personally interviews the casino security officers for promotions, while Art Richardson interviews the racetrack security officers and then makes recommendations to Alrutz about promotion of those guards.

Security officers working in both the racetrack and casino divisions at The Meadows are classified as either "Security Officer 1" or "Security Officer 2".²⁵ Security Officer 1 guards generally have less than two years of experience, while those whom the Employer classifies as Security Officers 2 have worked for the Employer long enough to receive three evaluations (one at the end of the 90-day probationary period and annual evaluations at the end of their first and second years of employment).

The Employer's security officers are all hourly paid and they all punch a time clock to register the number of hours they work. The casino security officers report to work and punch in at the shift supervisor's office, which is located just inside the employee entrance on the ground level of the casino. At the end of their shifts, they punch out at the same location, using one of three time clocks positioned there. Most racetrack officers report to work and punch in at the stable gate. Those racetrack security officers who are assigned to work in the Racebook area of the casino and in the parking garage report to the shift supervisors' office in the casino, to pick up their radios, and they also punch the time clock located at the stable gate.²⁶

As previously stated, most of the racetrack guards are part-time employees. Their shifts are for either six hours or eight hours at a time. The number of shifts each officer works per week varies based on the individual guard's preferences and shift availability. In the casino, the Employer's security officers routinely work eight-hour shifts, for a total of 40 hours per week.

Hourly wages for the Employer's security officers are based on their classifications as Security Officer 1 and Security Officer 2, regardless of whether they work on the racetrack side

²⁵ The Employer also designates one security officer on the racetrack side of the business as a "fire marshal" and three Security Officer 2 guards in the racing division hold the additional title of "sergeant." On the casino side of the business, the Employer identifies three Security Officer 2 guards as "assistant shift supervisors." No party contends that any of these employees are supervisors within the meaning of Section 2(11) of the Act. The fire marshal, sergeants and assistant shift supervisors were all included in the bargaining unit under the recently expired contract between the Employer and the Intervenor.

²⁶ During the course of their patrols, racetrack security officers also activate a magnetic disk called a "Detex," which records when the officers have passed certain places in their rounds. There is no Detex system in the casino.

of the business or in the casino. The wage range for Security Officer 1 is \$9.79 to \$10.85 per hour, depending on length of service, in both the casino and the racetrack.²⁷ Security officers who are classified as Security Officer 2 earn \$11.64 per hour, regardless of assignment location.²⁸

As previously described, Security Director Alrutz oversees all of the Employer's security operations. Alrutz directly supervises Director of Racing Security Art Richardson, as well as the three shift supervisors on the casino side of the business. Richardson directly supervises the racetrack security officers, with the exception of the racetrack guards who are assigned to work in the Racebook area of the casino; these guards report directly to the casino shift supervisors.

All of the Employer's security officers are subject to the same employee policies and procedures, regardless of assignment location. Shift supervisors are authorized to issue written disciplinary notices to security officers on the casino side of the business and Director of Racing Security Art Richardson is authorized to do the same on the racetrack side of the business. Security Director Alrutz handles all suspensions for both casino security officers and racetrack security officers. Alrutz also makes discharge recommendations to the Employer's Human Resources Department, regarding security officers who work in both sides of the business. The Human Resources Department official effectuates terminations based on Alrutz's recommendations.

The Employer prepares performance evaluations for all of its security officers. The appraisals are completed after the initial 90-day probationary period, after one year of

²⁷ On the racetrack side of the business, because most of the security officers are part-time employees, seniority is calculated based on the number of days worked. For the casino security officers, seniority is determined by date of hire.

²⁸ The security officers who are designated as "sergeants" for the racetrack and the racetrack officer who works as a fire marshal receive slightly higher wages, as do the assistant shift supervisors who work in the casino.

employment and again after two years of employment. The security officers' direct supervisors prepare the evaluations, which Alrutz approves.

All security officers receive essentially the same benefits, whether they work in the casino or at the racetrack. These include bereavement leave, medical leave, personal leave, life insurance coverage, health insurance coverage, vacation benefits, paid holidays²⁹ and pension benefits.³⁰

In performing their job duties, all of the Employer's security officers use the same equipment. More particularly, all of the Employer's security officers carry radios for communication, regardless of whether they work on the casino side or the racetrack side of the business. The radios are set to the same frequency for both the casino security officers and the racetrack security officers. Separate channels on that frequency are designated for the casino and racetrack areas. All security officers also carry flashlights.

The Employer provides a vehicle for use in mobile patrols on each side of the business. Security officers who are assigned to mobile patrol for the casino area drive a Honda Ridgeline, while those who patrol the racetrack area use a Jeep Cherokee for that purpose.

All security officers, whether assigned to the casino or to the racetrack area, wear uniforms. The casino security officers' uniforms feature black pants and white shirts with patches on both sleeves. The patches have a logo that includes the words, "Meadows Security." Security officers on the casino side of the business wear name tags that state the employees' names and security access information. The shift supervisors and assistant shift supervisors in the casino also wear blue blazers.

²⁹ While many of the holidays overlap for casino and racetrack security officers, some are different. In this regard, on the racetrack side of the business security officers receive Kentucky Derby Day, Belmont Day and Adios Day (or the Friday before) as holidays, all of which are tied to events in the racing industry. Similarly, casino security officers receive Labor Day as a holiday, which is not available to the racetrack security officers.

³⁰ It appears that sometime in the past, the racetrack security officers were covered by some sort of annuity plan. Under the terms of the expired contract between the Intervenor and the Employer, however, both the racetrack and casino security officers have access to a 401(k) plan.

On the racetrack side of the business, the security officers wear navy blue pants with either a black or gold stripe down the legs of the pants.³¹ Racetrack security officers' shirts are navy blue, with patches on the sleeves that say, "The Meadows."³² The guards who are assigned to the racetrack area wear nametags, as well as badges that contain the Commonwealth's seal and say "Meadows Security Officer." Racetrack guards wear warmer outer clothing during the winter months, as their patrols require them to be outside for prolonged periods of time.

Security officers from the casino and the racetrack both use the employee dining room, which is accessible to all of the Employer's casino and racetrack employees. They also have informal contact with each other in the Employer's general office area and Human Resources and payroll offices. Those racetrack security officers who are assigned to work in the Racebook area of the main building have periodic contact with casino security officers, as do the racetrack officers who work in the parking areas. Generally, casino security officers do not enter the racetrack enclosure, including the stables and paddock areas. Nor do the racetrack and casino guards substitute for each other in the event of absences. Since the Employer began operating its casino, four of the security officers who previously worked at the racetrack have permanently transferred to the casino side of the business.

B. Analysis

It is well settled that employees of an employer may be appropriately grouped in more than one way for the purposes of collective-bargaining. The Board explained this principle in the following way, in its seminal case, Overnite Transportation Co., 322 NLRB 723 (1996):

"There is nothing in the statute which requires that the unit for bargaining be the *only*

³¹ The color of the stripe is determined by the employee's length of service.

³² The logo on the racetrack guards' shirt sleeves is still the "MEC" logo, given that the Employer only assumed full operation of the racetrack in August 2009. The Employer intends to change the racetrack security officers' shirt patches to have them conform to those on the casino security officers' uniforms, but has not yet done so.

appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’” *Id.* at 723, quoting Morand Bros. Beverage Co., 91 NLRB 409, 418 (1950), *enfd.* on other grounds 190 F.2d 576 (7th Cir. 1951). Thus, the Board’s policy is to consider first whether the petitioned-for unit is appropriate.

With respect to the designation of an appropriate unit comprised of guards, the Board has found that different classes of guards employed by a single employer belong in a single unit “unless it can be said that there is a subgroup with a separate community of interest that warrants separate representation.” American Security Corporation, 321 NLRB 1145, 1146 (1996), citing University of Tulsa, 304 NLRB 773, 774 (1991); See, also, The Broadway, 215 NLRB 46 (1974) (Board held that fitting room checkers were guards who should be included in unit with store security inspectors and watchmen). Relevant factors for evaluating community of interest include the following: common functions and duties; shared skills; functional integration; temporary interchange; frequency of contact with other employees; commonality of wages, hours and other working conditions; permanent transfers, shared supervision; common work location and bargaining history. See, generally, Casino Aztar, 349 NLRB 603 (2007); Publix Super Markets, 343 NLRB 1023 (2004); Alley Drywall, Inc., 333 NLRB 1005 (2001); Hotel Services Group, 328 NLRB 116 (1999); Transerv Systems, 311 NLRB 766 (1993); and The Phoenician, 308 NLRB 826 (1992). Applying these factors to the record evidence in the instant case, I find that the petitioned-for unit restricted to casino security officers is unsupported by Board precedent and inappropriate.

The casino security officers cannot be distinguished from the racetrack security officers on the basis of their job functions, duties or skills. The Employer charges all of the security officers with the same basic responsibilities: to protect people, to protect property and to control access to the facility. Moreover, the job assignments involve the same tasks of patrolling, observing, assisting patrons and other employees, and recording observations. There is no difference in the skills required for these tasks, whether one is working at the racetrack or in the

casino, and all security officers must possess some type of state licensure.³³ Additionally, there is no distinction between the racetrack security officers and the casino security officers in terms of the requirement that they must pass background checks before receiving their respective licenses.

There is also significant functional integration among all of the Employer's security officers. First, the racetrack and the casino are themselves fully integrated into a single overall operation, The Meadows. Second, the racetrack guards and the casino guards both work within a single Security Department, which is part of the Employer's integrated enterprise.

Like the casino security officers whom the Petitioner seeks to represent, the racetrack security officers are paid on an hourly basis, which is recorded with the use of time clocks.³⁴ Moreover, the security officers' primary job classifications are the same for both the casino and racetrack divisions of the Employer enterprise, with designations for Security Officers 1 or Security Officers 2 on both sides of the operations. The wages for each of these classifications are the same, regardless whether the guards work in the casino or at the racetrack.

The casino security officers share other terms and conditions of employment with the racetrack security officers, as well. Both groups of security officers wear uniforms;³⁵ both use the same type of equipment; and mobile patrol guards from both groups use company-owned vehicles to perform their job tasks.

With the exception of differences in designated holidays and types of pension plans, the casino security officers and the racetrack security officers enjoy essentially the same benefits.

³³ Evidence that some security officers are licensed by the Pennsylvania Gaming Control Board and others are licensed by the Pennsylvania State Harness Racing Commission warrants no contrary conclusion. The relevant fact is that all security officers must maintain some form of licensure.

³⁴ While the time clocks for the casino and racetrack security officers are located in the casino shift supervisors' office and at the stable gate, respectively, the two groups of employees share a common requirement to record their working hours by "punching" automated clocks.

³⁵ To the extent that the racetrack and casino guards' uniforms are different, this distinction does not warrant a finding that the casino guards constitute a separate appropriate unit. University of Tulsa, *supra*.

The differences in which holidays are observed by each group and types of pension plans do not warrant a conclusion that the casino security officers lack a community of interest with the racetrack security officers, where, ultimately, both groups receive paid holidays and pension benefits of some sort. Similarly, I find that the distinction in the two groups' methods of calculating seniority (number of days worked, for the racetrack employees, and starting dates, for the casino guards), largely based on the fact that most racetrack guards are part-time employees, is insufficient to support a finding that the casino guards lack a community of interest with the racetrack guards. The relevant factor is that both groups use seniority for obtaining certain benefits, such as vacations.

Recognizing that the racetrack officers and the casino officers generally have separate immediate supervision, I note that a single manager, Security Director Alrutz, has oversight responsibility for both groups.³⁶ In circumstances such as these, the Board has held that distinctions in immediate supervision do not warrant a finding that separate groups of employees lack a community of interest. See, e.g., Casino Aztar, supra; Hotel Services Group, supra.

The casino security officers cannot be distinguished from the racetrack security officers on the basis of employee rules. Nor is there a distinction for the two groups with respect to hiring, firing and/or disciplinary procedures. Although immediate supervisors in each division are responsible for hiring interviews, evaluations and initial disciplinary actions, it is Security Director Alrutz who has the final authority in these matters. Further, all discharges are implemented by the Employer's Human Resources Department.

The record establishes that four of the racetrack security officers have transferred to the casino side of the business, where they now serve as casino guards. Further, there is regular contact between casino security officers and racetrack officers, when guards from each group

³⁶ There is also "cross-over" supervision to the extent that racetrack security officers who are assigned to work in the Racebook report directly to the casino shift supervisors.

“overlap” in the Racebook, bowling alley and parking garage areas of the casino. All of the security officers have opportunities for informal contact with each other, as well, in the employee dining room, the main office or the Human Resources office. While there is no evidence of daily interchange between the casino security officers and the racetrack security officers, the absence of such interchange does not mandate a finding that the casino security officers constitute a separate appropriate unit. See, e.g., The Phoenician, 308 NLRB at 827.

Finally, the record establishes that the racetrack security guards and the casino guards share a significant community of interest with respect to bargaining history. In this regard, the two groups of guards have been represented, together, in a single unit, since the Employer opened its casino in 2007. Further, guards from both the racetrack and casino sides of the Employer’s operation participated in collective-bargaining negotiations between the Intervenor and the Employer; a racetrack security officer served as the chief shop steward for both racetrack and casino guards; and the Petitioner initially sought to represent both groups of guards in a single unit. In short, the bargaining history in this matter overwhelmingly supports a determination that the racetrack security officers share a substantial community of interest with the casino security officers.³⁷

Based on the above and record as a whole, I find that a unit limited to the casino security officers is inappropriate because those employees do not possess a community of interest that is separate and distinct from the racetrack guards. In reaching this conclusion, I note that the Board’s decision in American Security Co., supra, upon which the Petitioner relies in arguing for a unit limited to casino guards, is clearly distinguishable. In that matter, the Board considered whether the employer’s armored car division guards and its uniform security division guards constituted subgroups of guards with sufficiently separate communities of interest that a unit comprised solely of armored car division guards was an appropriate unit. Finding that a unit

³⁷ Indeed, there is no record evidence of a bargaining history that is limited to the casino guards.

limited to armored car guards was, in those specific circumstances, appropriate, the Board reasoned that the two groups of guards had completely different job duties and responsibilities (one being to pick up, transport and deliver money and other valuables in armored vehicles and the other being to protect and secure the client's property, unarmed).

No such distinctions exist with respect to the facts before me. The Employer's racetrack security officers and casino officers share common job duties, responsibilities and skills in a functionally integrated department; have common supervisory oversight; share common terms and conditions of employment; have been permitted permanent transfers from the racetrack to the casino; and share a strong bargaining history. While there are some factors which would support finding that the petitioned-for unit is appropriate, such as separate immediate supervision, absence of daily interchange and distinctions in which holidays are observed, in the circumstances of this case, these factors are insufficient to demonstrate that the racetrack security officers have a separate community of interest distinct from the casino security officers. For these reasons, I conclude that the casino security officers do not constitute an appropriate unit in the particular circumstances of this case. Rather, I find that a unit comprised of all of the Employer's guards to be the smallest appropriate unit.

VII. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate³⁸ for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time security officers performing guard duties, as defined in Section 9(b)(3) of the Act, employed by the Employer at its Washington, Pennsylvania, facility; excluding office clerical employees, professional employees and supervisors as defined in the Act and all other employees.

VIII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Union, Security, Police and Fire Professionals of America (SPFPA). The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which

³⁸ Inasmuch as I have administratively determined that there is a sufficient showing of interest in support of the broader unit, it is not necessary to provide the Petitioner with additional time in which to submit evidence in support of the showing of interest.

commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **January 19, 2010**. No extension of time to file this list will be granted except in extraordinary

circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlrb.gov,³⁹ by mail, or by facsimile transmission at 412-395-5986. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

IX. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **January 26, 2010**. The request may be filed

³⁹ To file the eligibility list electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

electronically through E-Gov on the Agency's website, www.nlr.gov,⁴⁰ but may not be filed by facsimile.

DATED: January 12, 2010

/s/Robert W. Chester
Robert W. Chester, Regional Director
NATIONAL LABOR RELATIONS BOARD
Region Six
William S. Moorhead Federal Building
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222

Classification Index

280-7940
280-7990
347-4040-0100
420-1209
420-2900
440-1760-5300

⁴⁰ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.